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16 Attorneys for Defendant
17 COMCAST INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 DANIEL KEATING-TRAYNOR on
16 behalf of himself and all others similarly
17 situated,

18 Plaintiffs,

19 vs.

20 AC SQUARE INC.; COMCAST INC.;
21 AFSHIN GHANEH; ANDREW
22 BAHMANYAR; and DOES 1-60
23 inclusive,

24 Defendants.

Case No. CV-08-3035-MHP

**DEFENDANT COMCAST INC.'S NOTICE
OF MOTION AND MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

FRCP RULE 12(B)(6)

Date: September 15, 2008
Time: 2:00 p.m.
Courtroom: 15
Judge: Honorable Marilyn H. Patel

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on September 15, 2008, at 2:00 p.m., or as soon thereafter
27 as the matter may be heard in Courtroom 15 of the above-entitled Court, located at 450 Golden
28 Gate Avenue, San Francisco, California 94102, Defendant Comcast Inc. (hereinafter "Comcast")

1 or "Defendant") will and hereby moves this Court to dismiss Plaintiff Daniel Keating-Traynor's
2 ("Plaintiff") Complaint against Comcast, pursuant to Federal Rule of Civil Procedure 12(b)(6).

3 Plaintiff's First Claim for Conspiracy to Violate Business and Professions Code Section
4 17200 fails to state a claim upon which relief can be granted because Plaintiff did not, and cannot,
5 state a claim showing the formation and operation of a conspiracy. Plaintiff's Second Claim for
6 Violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (hereinafter "FLSA") and
7 Third Claim for Conspiracy to Violate the FLSA both fail to state a claim upon which relief can
8 be granted because his claims are barred by the maximum three-year statute of limitations. In
9 addition, Plaintiff's Fourth Claim for Failure to Pay Monies at Termination and Fifth Claim for
10 Conspiracy to Violate Labor Code Section 558 are also time-barred. Leave to amend would be
11 futile because the allegations in Plaintiff's Complaint conclusively demonstrate that Plaintiff
12 would not be able to state viable claims under these theories.

13 This motion is based on this Notice of Motion and Motion, the Memorandum of Points
14 and Authorities, the Request for Judicial Notice, and the pleadings and papers previously filed

15 MORGAN, LEWIS & BOCKIUS LLP
16 DARYL S. LANDY
17 ANN MARIE REDING

18 Dated: August 6, 2008

By /s/ Ann Marie Reding
Daryl S. Landy
Ann Marie Reding
Attorneys for Defendant
COMCAST INC.